IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1025 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HATKESHWAR JAGIR KAMMUKHVAS AANNKSHETRA AND NAGAR GNATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1025 of 2003

MR NV ANJARIA for Petitioner No. 1-2

MR SN SHELAT, ADVOCATE GENERAL, with Ms MAITHILI MEHTA, AGP, for Respondent No. 1-3

MR NIKHILESH J SHAH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 12/08/2004

ORAL JUDGEMENT

RULE. Service of rule is waived by learned AGP Ms. Maithili Mehta for respondents Nos. 1 and 3 and by learned advocate Shri N.J. Shah for respondent No. 2. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners are trustees of Shree Hatkeshwar Jagir Kammukhavas Annakshetra and Nagar Gnati Bhojanshala Trust, Bhuj. The Trust owns a temple of Lord Shiva, popularly known as Shri Hatkeshwar Mandir, which was constructed on land bearing Survey Nos. 256 to 264, converted into Original Plots Nos. 261 to 269 as a result of Bhuj Town Planing Scheme No. 1 made under the provisions of the Gujarat Town Planing and Urban Development Act, 1976 (hereinafter referred to as 'the Act'). In lieu of the said original plots Nos. 261 to 269, Final Plot No. 110 has been allotted to the Trust. On account of reconstitution of the original plot, boundaries of the original plot have been changed and size of the original plot has been reduced. Formerly, the original plot admeasured 1828.21 sq.mts. of land, whereas F.P. No.110 admeasures 1710.14 sq.mts.

3. As a result of reconstitution of the plot, not only the Trust loses some land, but the main entrance gate, which has historical significance, will also have to be demolished. The temple is having great socio-religious importance and, therefore, the trustees have been aggrieved because of demolition of the main gate.

4. During the pendency of the petition, with efforts of the learned advocates and the learned Advocate General, the parties to the litigation have agreed to resolve the dispute, and in pursuance of the understanding arrived at among the parties, the following order is being passed :

5. There appears to be some doubt with regard to size of the original plot, namely, size of land bearing survey Nos. 256 to 264. The size of the original plot is important for the reason that the Trust will have to be compensated for the loss of land and, therefore, the parties believe that it would be better if the original plot is measured again by the City Survey Superintendent, Bhuj. If, upon remeasurement, size of the original plot is found to be bigger than 1828.21 sq.mts., the Trust would be getting more amount of compensation.

6. In pursuance of the above understanding, the City Survey Superintendent and respondent No. 3 are directed

to remeasure Original plot Nos. 261 to 269 (survey No. 256 to 264) so that the measurement as reflected in the survey record can be confirmed after intimation to the petitioner.

7. It has been agreed that the main gate of the temple will be demolished by the petitioner-Trust, and for the loss suffered by the Trust, respondent No. 2 shall compensate the Trust. While calculating compensation, due weightage shall be given to the fact that the gate had to be demolished.

8. In lieu of the petitioner Trust surrendering its another land bearing survey No. 352, Sheet No. 182 situated opposite to the temple, it has been agreed that the Trust shall be allotted a plot of land admeasuring 500 sq.mts. at Ravalvadi, the relocation site. The said plot shall be allotted at the price, which might be fixed by the concerned committee of respondent No. 2, as per its land allotment policy.

9. It has been also agreed that the trustees shall apply to respondent No. 3 for seeking exemption from payment of betterment charges, as the Trust is a charitable trust and such a benefit is given to all public charitable trusts and respondent No.3 shall decide the application in accordance with law and its practice.

10. In view of the aforestated understanding arrived at among the parties, possession of excess land over Final Plot No. 110 shall be given to respondent No. 2 as soon as possible and for that purpose respondent No. 2 shall mark the area of land which is to be handed over by the petitioners.

11. A copy of the writ be also forwarded to the City Survey Superintendent, Bhuj, so that the needful can be done by him for the purpose of carrying out the direction given by this court.

12. The parties are directed to act as per the aforestated agreement arrived at among them.

13. In pursuance of the aforestated understanding arrived at among the parties, the petition is allowed to the above extent with no order as to costs. Ad-interim order granted earlier stands vacated. Learned advocate Shri Anjaria has received letters from the petitioners dated 5.8.2004 and 10.8.2004, which are kept on record.

Direct service is permitted.

(hn) (A.R. Dave, J.)